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State of New York Public Employment Relations Board Decisions from December 27, 1979

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from December 27, 1979

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#1A-12/27/79

COUNTY OF MONTGOMERY AND THE MONTGOMERY
COUNTY SHERIFF,

BOARD DECISION AND ORDER

Joint Employer,

-and-

CASE NO. C-1902

MONTGOMERY COUNTY DEPUTY SHERIFF'S
ASSOCIATION,

Petitioner,

-and-

LOCAL 829, CIVIL SERVICE EMPLOYEES
ASSOCIATION, INC.,

Intervenor.

HARVEY & HARVEY (THOMAS DUSSAULT, ESQ., of
Counsel) for Petitioner

ROEMER & FEATHERSTONHAUGH (MICHAEL SMITH,
ESQ., of Counsel) for Intervenor

WILLIAM E. MOORE, ESQ., for County

On May 23, 1979, the Montgomery County Deputy Sheriff's Association (Association) filed a petition seeking to represent 35 deputy sheriffs who are jointly employed by the County of Montgomery and the Montgomery County Sheriff. The deputy sheriffs are currently in a unit of 350 employees. Except for the deputy sheriffs, all the unit members are employees of the County only. That unit is represented by Local 829 of the Civil Service Employees Association, Inc. (CSEA) and it has intervened in this proceeding for the purpose of opposing the petition. Both the County and the Sheriff agree with the petitioner that there should be a separate

unit for the deputy sheriffs.

In his decision dated September 13, 1979, the Director of Public Employment Practices and Representation (Director) ruled that there should be a separate unit for deputy sheriffs and CSEA filed exceptions to that decision of the Director. In support of its exceptions, CSEA argues that the Director did not pay sufficient attention to the fact that the deputy sheriffs had been in the same unit as the County employees for ten years and that there is no evidence of any conflict of interest between the deputy sheriffs and the County employees throughout this period of time. Indeed, as noted by CSEA, it supported the deputy sheriffs in their one demand and it represented a deputy sheriff in the one grievance that emanated from that group of employees.

CSEA further argues that the Director erred in that he considered the allegation that the County supports the petition. It contends that the evidence concerning the position of the County is not reliable because it was based on a poll of the members of the County Board of Supervisors and not on a formal resolution of that Board. Finally, CSEA argues that the fact that the deputy sheriffs are jointly employed by the Sheriff and the County while the other unit members are employees of the County only is of little consequence because the Sheriff has always deferred to the County in negotiations.

DISCUSSION

Having reviewed the record, we affirm the determination of the Director.

The County prefers a separate unit of deputy sheriffs. Evidence of that preference is a mere statement which is not sup-

ported by reasons. While the statement of a public employer that one negotiating unit structure would better serve its administrative convenience than another is entitled to some weight (Sullivan County, 7 PERB ¶3069 [1974], City of Amsterdam, 10 PERB ¶3031 [1977]), here, the County does not even assert that the negotiating unit structure it prefers would better serve its administrative convenience than the existing unit structure does. Accordingly, we give no weight to the stated preference of the County.

The stated preference of the Sheriff is a different matter. In part, his preference is based upon the fact that the deputy sheriffs are police officers and that they may have police responsibilities in the event of a strike by the County employees. This is related to the unit standard specified in §207.1(c) of the Taylor Law that "the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public". It is this standard that is the basis of the consideration of the administrative convenience of the employer. CSEA would have us disregard this concern because strikes by public employees are illegal under New York State law. This response is not persuasive because strikes by public employees do occur notwithstanding their illegality.

The second reason for the Sheriff's preference is related to his role -- or absence of a role -- in negotiations. The Sheriff has had no role in negotiations since his appointment in October, 1974, even though he is a joint employer of the deputy sheriffs. He did, however, seek a role in 1974, but he never received a response to the request that he addressed to the County,

which is the sole employer of 90% of the employees in the negotiating unit. Because of this rebuff, he never actively sought a role in subsequent negotiations. However, because he did not participate in negotiations, he does not deem himself bound by contract provisions that might limit his authority. He has specifically stated that he is not bound by the grievance procedure in the contract. However, when the one grievance was filed by a deputy sheriff, he did accept the advice of the County Attorney that he abide by the procedure. It thus appears that the structure of the current negotiating unit has deprived the Sheriff of an opportunity to participate in the negotiations for the terms and conditions of employment of his deputies; it has also deprived the deputy sheriffs of an opportunity to negotiate with the Sheriff, one of their joint employers.

Balanced against this failure of the current negotiating structure to afford the Sheriff and deputy sheriffs an opportunity to negotiate with each other is the circumstance that for ten years there has been no apparent conflict of interest within the negotiating unit. We have ruled that where there is evidence of a long-standing history of meaningful and effective negotiations for all the employees in a negotiating unit, that unit will not be fragmented even though it contains elements which we would have placed in separate units had the issue been placed before us in the first instance. Town of Smithtown, 8 PERB ¶3015 (1975); County of Rockland, 10 PERB ¶3014 (1977). This ruling, however, is not absolute. In City of Amsterdam, 10 PERB ¶3031 (1977), we placed police and firefighters in separate negotiating units even though the evidence showed a long-standing history of meaningful and effective negotiations in a combined unit. Two circumstances

distinguished the situation in Amsterdam from the situation in Smithtown and Rockland. The first was the stated position of the employer that its administrative convenience would be better served by the separate units. The second was the strong prevailing practice of placing police and firefighters in separate negotiating units. In the instant case, the stated reason of the Sheriff for seeking a separate unit for deputy sheriffs is more persuasively related to his administrative convenience than was the reason given by the Mayor in City of Amsterdam.¹ The existing unit structure has deprived both the Sheriff and the deputy sheriffs from participating in negotiations with each other. This deprivation is a compelling reason for establishing a separate unit for deputy sheriffs where, as here, the sheriff does not wish to delegate his negotiations responsibilities to the County. Notwithstanding a history of meaningful and effective negotiations for all employees in the existing negotiating unit, that unit cannot continue because it includes employees of both the County and of the County-Sheriff joint employer and the Sheriff and the deputy sheriffs object to such a unit.

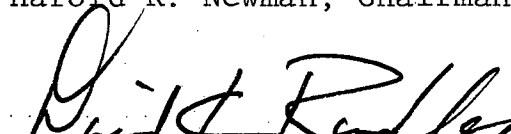
NOW, THEREFORE, WE ORDER that there be a negotiating unit that includes all full-time deputy sheriffs and excludes all other employees.

¹ The Mayor's reason was that he could negotiate a more favorable contract if he were not confronted with a unified group of policemen and firefighters.

WE FURTHER ORDER that an election by secret ballot be held, under the supervision of the Director, among the employees in the unit of deputy sheriffs who were employed on the payroll date immediately preceding the date of this decision, and that the joint employer submit to the Director, the Association, and CSEA, within ten days from the date of this decision, an alphabetized list of all employees within the unit of full-time deputy sheriffs who were employed on the payroll date immediately preceding the date of this decision.

DATED: Albany, New York
December 27, 1979


Harold R. Newman, Chairman


David C. Randles, Member

Member Klaus did not participate.

6109

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF SUFFOLK,

Respondent,

-and-

SUFFOLK COUNTY PATROLMEN'S BENEVOLENT
ASSOCIATION, INC.,

Charging Party.

#1B - 12/27/79

BOARD DECISION AND ORDER

CASE NO. U-3684

KIMMELL & KIMMELL (LEONARD S. KIMMELL, ESQ.,
of Counsel), for Respondent

HARTMAN & LERNER (CHARLES P. DeMARTIN, ESQ.,
of Counsel), for Charging Party

The charge herein which was filed by the Suffolk County Patrolmen's Benevolent Association, Inc. (PBA) alleges that Suffolk County (County) violated its duty to negotiate in good faith in that it unilaterally transferred police officers working in the Central Records, Teletype and Firearms sections of its police department to other sections of the department, and concomitantly hired civilian personnel to perform the former duties of the displaced officers. PBA's charge is not that the County couldn't transfer police officers in these sections to other sections, but that it could replace them only with other unit employees.

The facts are as alleged in the charge. On those facts, however, the hearing officer dismissed the charge. He did so because he ruled that the replacement of policemen by employees who are not policemen is not a violation of the County's duty to

6110

¹
negotiate.

PBA has filed exceptions to that ruling. In support of its exceptions, it argues that the assignment of tasks to civilian employees which had previously been performed by police officers is a mandatory subject of negotiation. It further argues that the hearing officer erred in that he did not give sufficient attention to the County's unilateral change of the negotiating unit.

DISCUSSION

The hearing officer reasoned correctly that the charge places in issue the authority of an employer to determine the qualifications for a position. The status of police officer is one which is attained only through the satisfaction of numerous special employment qualifications, including stringent age, education, height, weight, physical health, physical fitness and police training requirements,² and the County determined that those qualifications were not needed for employees assigned to certain record maintenance, teletype and training tasks. It is these tasks, previously performed by police officers, which it assigned to civilian employees. The hearing officer also ruled correctly that a public employer is authorized to determine the qualifications for

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¹ There is no evidence, or even any allegation, that the transfers were designed to deprive employees of their right of organization. There is also no allegation that the changes made by the County had any impact upon the terms or conditions of employment of unit employees about which the County refused to negotiate. Thus, no other improper practices are involved in this case. The comments of the hearing officer concerning the possibility of a new charge should the County abuse its right to alter the qualifications for employees in the Central Records, Teletype and Firearms sections of the police department are, therefore, gratuitous. So are his comments concerning the possible impact of the County's action.

² See, e.g., the minimum qualifications for appointment set out in CSL §58, GML §209-q and 9D NYCRR, Part 6000.

a position and that it need not negotiate such a determination.³

The right of the County to alter the qualifications of the personnel performing the tasks in question and to assign those tasks to civilian personnel does not automatically dispose of the allegation, emphasized in PBA's exceptions, that the County changed the negotiating unit improperly. When work that has been performed by unit employees is reassigned to newly appointed employees, those newly appointed employees may be deemed to be performing unit work in which event they may be included in the unit. Alternatively, the employer may be duty bound to negotiate with the unit representative concerning the removal of the unit work--and the workers who perform that work--from the unit. East Ramapo Central School District, 10 PERB ¶3064 (1977). On the record before us, however, we do not find this to be the case here. The recognition clause of the agreement between PBA and the County deals with a negotiating unit that is defined in terms of the qualifications of employees in the unit and not of the tasks assigned to them; PBA is recognized as the representative of police officers and detectives.⁴

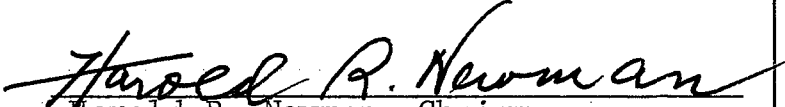
³ See New York State Court Employees Assn., 12 PERB ¶3075 (1979), rev'd. on other grounds, Evans v. Newman 100 M.2d 207 (1979), 12 PERB ¶7016, aff'd. App. Div. 2d (3d Dept., 1979), 12 PERB ¶7022; Chateaugay CSD, 12 PERB ¶3015 (1979) PBA of Hempstead, 11 PERB ¶3072 (1978).

⁴ Should PBA contend that, notwithstanding the recognition clause in its agreement, by reason of past practice, it represents the employees who have replaced the police officers in the Central Records, Teletype and Firearms sections of the police department, it may assert that position to the employer and, if necessary, test it through the contractual grievance procedure. It may also seek to resolve the issue in a representation proceeding.

NOW, THEREFORE, WE AFFIRM the decision of the hearing
officer and

WE ORDER that the charge herein be and it
hereby is DISMISSED.

DATED: Albany, New York
December 27, 1979


Harold R. Newman, Chairman


David C. Randles, Member

Member Klaus did not participate.

6113

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

YONKERS CITY SCHOOL DISTRICT,

Respondent,

-and-

YONKERS COUNCIL OF SUPERVISORY
ASSOCIATIONS, LOCAL 8, AFSA,
AFL-CIO,

Charging Party.

#1C-12/27/79

BOARD DECISION

AND ORDER

CASE NO. U-3525

ARTHUR J. DORAN, JR., ESQ., for Respondent

WILLIAM W. THOMPSON II, ESQ., for Charging Party

This matter comes to us on the exceptions of the Yonkers Council of Supervisory Associations, Local 8, AFSA, AFL-CIO (Local 8), to a decision of a hearing officer dismissing its charge. The charge was that the Yonkers City School District (District) unilaterally changed a term and condition of the employment of unit employees when it terminated its past practice of paying the full cost of the employees' health insurance premiums.

FACTS

The 1974-77 agreement between Local 8 and the District imposed an obligation upon the District to pay premiums in the amount of \$1,100 per employee for health insurance. The actual cost of the premiums for the insurance provided, however, was \$1,178 in 1974, \$1,225 in 1975, \$1,400 in 1976 and \$1,826 in 1977¹, and the District paid the full amount of the premiums throughout the contract

¹ These are the costs of the family plan insurance coverage.
The charge herein is not concerned with the individual plan.

period.

The District and Local 8 did not conclude an agreement for a contract to succeed the one that expired on June 30, 1977, until April 13, 1978, and it did not take effect until about a month later when it was approved by the Yonkers Emergency Financial Control Board. The successor contract was retroactive to July 1, 1977, and ran for one year. Even before negotiations for the 1977-78 contract had commenced, the District had expressed a concern that the actual cost of health insurance premiums was in excess of its contract obligation and, at the beginning of negotiations, the Superintendent of the District stated that it was improper for the District to pay above the contractually obligated amount. During the course of the ensuing negotiations between the District and Local 8, the parties agreed that the District's obligation for health insurance premiums would increase from \$1,100 to \$1,310. In return for the \$210 increase, Local 8 agreed to forego an annual physical examination which cost the District \$210.

On the day that the 1977-78 agreement was concluded, the Superintendent of the District once again told the negotiators for Local 8 that the District wanted a "cap" on its obligation for health insurance premiums. He further told them that the District had approved the increase from \$1,100 to \$1,310 reluctantly and only because the money for that increase had come from the elimination of the cost of the physical examination. However, notwithstanding his statement about the concern of the District to limit the amount that it was paying for health insurance premiums, the Superintendent of the District did tell the negotiators for Local 8 that the past practice of paying the full premium would continue through

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the life of the contract. The time between the conclusion of the 1977-78 agreement and its expiration was ten weeks, four of which were needed to obtain the approval of the Yonkers Emergency Financial Control Board.

On May 19, 1978, shortly after the Emergency Financial Control Board gave its approval, the District's Assistant Superintendent for Business wrote to the President of Local 8 seeking a meeting "to discuss the purchase of fringe benefit insurance, pursuant to our recently negotiated contract." The reason for the meeting was to have Local 8 inform the District as to the preferences of Local 8 regarding two alternative means by which the District could implement the agreement: either by asking the insurance company to provide a benefit plan for the amount of the premium that it was obligated to pay or by continuing the preexisting plan while charging the employees for the difference between the \$1,310 and the actual amount of the premium. The District also wanted to know whether Local 8 had any alternative suggestions for "complying with the cap on the contract." Local 8 responded that, inasmuch as the amount of the employer's contribution was not being reduced during the current contract period, the matter should be deferred to the negotiation of the contract that would succeed the one due to expire on June 30, 1978.

Once again, on June 22, 1978, the District's Assistant Superintendent for Business wrote to the President of Local 8. This time he stated that, because Local 8 had not come up with any proposals, he would institute a plan which would "fall within the fiscal guidelines which were negotiated between your union and the Board of Education." The memorandum precipitated a meeting at

which the President of the union once again said that the matter should be deferred for future negotiations.

Nothing further was said after that meeting until August 22, 1978, when the Assistant District Superintendent for Business issued a memorandum to all unit employees. It stated that there would be no change in the health insurance coverage of the unit employees, but that effective immediately, each unit employee covered by the family plan would have \$47.06 deducted from his monthly salary to pay for the amount of the premium that exceeded the District's obligation.² This action did not come as a surprise to the President of Local 8 who conceded that the District had indicated that it would do so.

The actual deductions did not commence until the second of the semi-monthly payments during October, 1978, but the District doubled the deduction during the first three payroll periods so that the employees did pay their share of the health insurance premiums from August 22, 1978, the time of the last memorandum of the District's Assistant Superintendent for Business.

DISCUSSION

In support of its exceptions, Local 8 argues that the District's contractual obligation to pay a specified amount of health insurance premiums was never intended to limit the District's obligation as evidenced by the District's past practice of paying more than the amount that it was contractually obligated to pay.

² The cost of the individual plan did not exceed \$1,310 and was not affected.

It finds support for this argument in the fact that after the agreement, the District continued, until August 22, 1978, to pay the full amount of the premiums without charging the employees for the cost in excess of the contractual rate.

Having reviewed the record, we affirm the decision of the hearing officer that the District did not act unilaterally when it discontinued its past practice of paying employee health insurance premiums in full. The extent of the District's obligation was fully negotiated and, as expressly stated in the agreement and accepted by Local 8, that obligation was to pay health insurance premiums in the amount of \$1,310 per employee. All that Local 8 could get from the District in those negotiations was an understanding that because only a short time remained to the end of that school year, the District would not cut its payments to the amount required by the new contract during the balance of that school year.

Where parties reach an understanding that a particular benefit will be furnished only during the contract period and will cease upon the expiration of the contract, that benefit lapses with the contract. It is not a part of the status quo³ which is deemed to continue after the expiration of the contract. This principle is applicable to the facts before us. Here, the understanding that the District would continue to pay the full amount of the premiums until the end of the 1977-78 school year only, clearly did not obligate it to continue to do so thereafter.

³ See Massapequa UFSD, 8 PERB ¶3022 (1975) in which we held that a benefit provided by a legislative determination, which took the place of an agreement, need not be continued after the expiration of the period covered by the legislative determination because that determination expressly stated that the benefits would be provided during that period only.

We do not find that the District's continued payment of the full premium during July and August 1978 evidenced an intention to pay more of the health insurance premium than it had obligated itself to pay in the 1977-78 agreement. Local 8 was on notice throughout this period that the District did not intend to pay more than its contractual obligation. As conceded by its President, Local 8 knew that the District was continuing to pay the full amount of the premiums on a temporary basis only, for the period necessary to resolve the alternative questions: whether to cut the premium by reducing the insurance benefits or to charge the unit employees a part of the amount of the premium. This period was extended by reason of Local 8's refusal to participate in discussions as to how the limitation upon the District's obligation should be implemented.

We conclude that the action of the District complained of herein was an implementation of an agreement it negotiated with Local 8 and it did not constitute an improper action.

WE ORDER the charge herein be, and it hereby is, DISMISSED.

DATED: Albany, New York
December 27, 1979


Harold R. Newman, Chairman


David C. Randles, Member

Member Klaus did not participate.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

STATE OF NEW YORK (STATE UNIVERSITY OF
NEW YORK),

Respondent,

-and-

COMMITTEE OF INTERNS AND RESIDENTS,

Charging Party,

-and-

UNITED UNIVERSITY PROFESSIONS, INC.,

Intervenor.

#1D - 12/27/79

BOARD DECISION

AND ORDER

CASE NO. U-3973

JOSEPH M. BRESS, ESQ., for Respondent

JEFFREY M. SELCHICK, ESQ., and
MICHAEL KATZER, ESQ., of Counsel for
Respondent

IRWIN GELLER, ESQ., for Charging Party

JAMES R. SANDNER, ESQ., for Intervenor

This matter comes to us on the exceptions of the Committee of Interns and Residents (hereinafter CIR) to the decision of a hearing officer dismissing its charge that the State of New York (State University of New York), (hereinafter employer) violated §209-a.1(a) of the Taylor Law by negotiating with United University Professions, Inc., (hereinafter UUP) during the pendency of a question concerning representation.

CIR filed a petition in August 1978 seeking a separate unit for the house staff officers, who are currently within the pro-

professional services unit for the State University system and are represented by UUP. The Director of Public Employment Practices and Representation (hereinafter Director) determined that an election should be held among employees in the existing professional services unit without first resolving the question whether house staff officers should be removed from the unit. The house staff officers, who comprised approximately 490 of the 16,000 employees in the professional services unit, would vote separately on what organization should represent them if they were placed in a separate unit and what organization should represent them if they were placed in the over-all university faculty unit. The reason for this procedure was that it would permit negotiations for the terms and conditions of almost 16,000 employees to proceed while the complex question of the unit placement of about 500 employees was being litigated.

This two tiered election was held after this Board denied a motion of CIR that the filing of exceptions to the interlocutory determination of the Director be authorized. 11 PERB ¶3097 (1978). UUP was successful in the election in the over-all unit, and the ballots in the proposed separate house staff unit election were never counted.¹ Thereafter, the employer negotiated with UUP for all unit employees except those affected by CIR's petition.

¹ The petition of CIR to represent the house staff officers in a separate unit was subsequently dismissed because of a strike by CIR. 12 PERB ¶3092 (1979).

The basis of CIR's charge is its assertion that the house staff officers have been prejudiced by the negotiations between UUP and the employer. Those negotiations did not deal with any house staff issues. However, according to CIR, upon its certification, UUP could not be expected to accord the concerns of the house staff officers any particular consideration but would, perforce, extend the basic UUP contract to them.

The hearing officer dismissed the charge. He determined that neither the representation rights nor the negotiation rights of the house staff officers would be prejudiced by the negotiations between the employer and UUP. He also determined that CIR's representation rights were not prejudiced because the negotiations took place after all ballots had been cast.

We affirm the decision of the hearing officer for the reasons stated in his opinion.

NOW, THEREFORE, WE ORDER that the charge herein be and it hereby is DISMISSED.

DATED: Albany, New York
December 27, 1979


Harold R. Newman, Chairman


David C. Randles, Member

Member Klaus did not participate.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
LACKAWANNA CITY SCHOOL DISTRICT,	:	#1E - 12/27/79
Respondent,	:	
-and-	:	<u>BOARD DECISION</u>
	:	<u>AND ORDER</u>
LACKAWANNA UNIT, ERIE EDUCATIONAL	:	
LOCAL 868, CSEA-AFSCME,	:	<u>CASE NO. U-3644</u>
Charging Party.	:	

EARL C. KNIGHT, for Respondent

KAVINOKY, COOK, SANDLER, GARDNER, WISBAUM
& LIPMAN (RONALD L. JAROS, ESQ., of
Counsel), for Charging Party

This matter is before us on the exceptions of the Lackawanna City School District (District) to a decision of a hearing officer that it violated §209-a.1(d) of the Taylor Law by refusing to negotiate in good faith. The violation, as found by the hearing officer, is that the District unilaterally (1) reduced the weekly hours of work of assistant custodians from 40 to 22, and (2) cut the wages and other benefits of the assistant custodians whose hours had been cut.

The District acknowledged that it cut the hours of work and benefits of the assistant custodians unilaterally, but it asserted that it was under no duty to negotiate the cuts before imposing them. Its posture was that the imposition of the cuts was a management prerogative, and that its obligation to negotiate did not arise until after its action, at which time it became obligated to negotiate the impact of its action. The hearing officer found

that the District was ready to negotiate the impact of its action, but he determined that the action itself had to be negotiated. In doing so, he distinguished between the action of a public employer in cutting hours and benefits of employees and its action in eliminating positions and laying off employees. The latter course, he ruled, is a management prerogative, but the former is not.

DISCUSSION

The first argument made by the District in support of its exceptions is that the hearing officer erred in that he failed to find that the District had eliminated the prior positions of full-time assistant custodians and that it had created new positions of part-time assistant custodians. The record does not support this argument. Rather it indicates that the positions of assistant custodians were retained, but the hours of the positions were cut. Indicative of this are the entries in the District's budget, which typically read:

<u>Account</u>	<u>Adopted 1977-78</u>	<u>Adopted 1978-79</u>
Assistant Custodian	\$10,221	\$ 5,111

Further supporting this conclusion is the fact that the employees who had worked as full-time assistant custodians were continued as part-time assistant custodians.

The alternative arguments made by the District in support of its exceptions raise three questions: (1) Did it have the right to cut the hours of the assistant custodians unilaterally?, (2) Did it have the right to cut the wages of the assistant custodians unilaterally?, and (3) Did it have the right to cut the fringe benefits of the assistant custodians unilaterally?.

In City of White Plains, 5 PERB ¶3008 (1972), we determined

that it is a management prerogative for a public employer to determine the number of employees in a given classification that it must have on duty at any given time, but that the scheduling of individual employees for the purposes of satisfying the manpower needs of the public employer is a mandatory subject of negotiation. Thus, the District was obligated to negotiate the scheduling of assistant custodians unless all of them work the identical 22-hour schedule. Only in that event is the District's action in cutting the assistant custodians' hours of work from 40 to 22 validated by its management prerogative of determining when it required the services of assistant custodians. In other circumstances, the District was required to negotiate the hours and schedules of the assistant custodians. On the record before us, however, we cannot ascertain whether the unilateral cut in the hours of the assistant custodians was or was not valid.¹

Assuming the right of the District to curtail the hours of its assistant custodians, it nevertheless has no right to change their wages and fringe benefits unilaterally. There is no evidence in the record as to the basis upon which wages were paid to the assistant custodians whose hours were cut or whether those wages were in accordance with any agreement. There is evidence that the parties had negotiated a fringe benefit package for regular part-time employees, but there is no evidence in the record whether the fringe benefits that were given to the assistant custodians whose hours were cut were in accordance with the agreement.²

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¹ There are post hearing statements by the employer concerning this matter, but there is no evidence in the record.

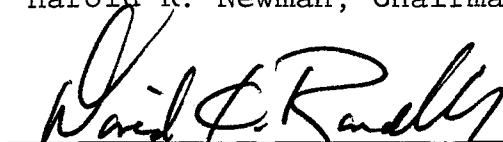
² Again, there are post hearing statements by the employer concerning this matter, but no evidence in the record.

On the record before us, we cannot determine whether the District acted improperly when it reduced the weekly hours of work of assistant custodians from 40 to 22 and it reduced the wages and other benefits of the assistant custodians whose hours had been cut. Moreover, assuming a violation by the District, the record does not provide us with sufficient information for the fashioning of an appropriate remedy.

Accordingly, we remand this matter to the hearing officer for further evidence and a new decision and recommended order.

DATED: Albany, New York
December 27, 1979


Harold R. Newman, Chairman


David C. Randles, Member

Member Klaus did not participate.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
GARRISON UNION FREE SCHOOL DISTRICT,	:	#1F - 12/27/79:
Respondent,	:	
- and -	:	BOARD DECISION ON
GARRISON EDUCATORS ASSOCIATION, <u>et al.</u> ,	:	MOTION
Charging Parties,	:	Case No. U-4001
- and -	:	
GARRISON TEACHERS ASSOCIATION,	:	
Intervenor.	:	

The Garrison Teachers Association (GTA), the intervenor herein, has made a motion pursuant to §204.7(h) of our Rules for permission to appeal an interlocutory ruling of a hearing officer directly to this Board.^{1/} The hearing officer's ruling was on a motion to dismiss the charge of the Garrison Educators Association (GEA) that the Garrison Union Free School District (the District) violated §209-a.1(a), (b), and (c) of the Taylor Law by discriminating against employees, coercing them, and otherwise interfering in an election in which GTA and GEA are contesting to represent employees of the District. The basis of the motion is GTA's contention that GEA has no standing to file an improper practice charge because it has not been certified or recognized.

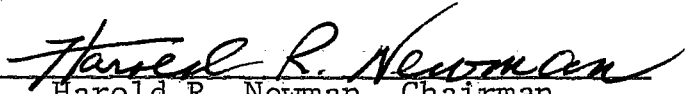
^{1/} Section 204.7(h) provides: "All motions and rulings made at the hearing shall be part of the record of the proceeding and, unless expressly authorized by the Board, shall not be appealed directly to the Board but shall be considered by the Board whenever the case is submitted to it for decision."

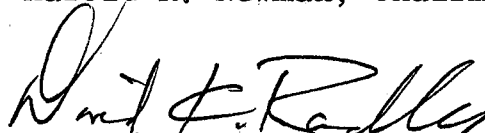
The hearing officer dismissed the motion, saying "it is not a prerequisite for the filing of an improper practice charge that an employee organization be either certified or recognized."

Having considered the motion, the Board hereby denies review of the interlocutory ruling.

The motion is DENIED.

DATED: Albany, New York
December 27, 1979


Harold R. Newman, Chairman


David C. Randles, Member

Member Klaus did not participate.